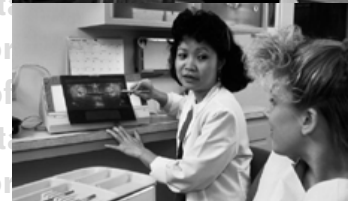
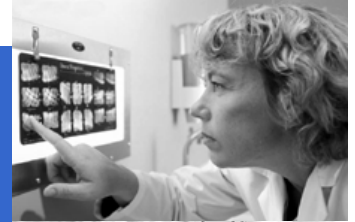


California Department of Consumer Affairs

Final Report of the Dental Board Enforcement Monitor

NewPoint Group
Management Consultants

February 27, 2004



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Ms. Denise Brown, Interim Director
California Department of Consumer Affairs
400 R Street, Suite 3000
Sacramento, California 95814

Final Report of the Enforcement Monitor for the Dental Board of California

Dear Ms. Brown,

We are pleased to present this final report on the Dental Board's Enforcement Program. The report is intended to serve several purposes. It provides a summary of changes that have occurred since appointment of the Enforcement Monitor two years ago. It also provides a summary of the current status of the Enforcement Program in terms of complaints received and closed, backlogs, processing times, referrals for disciplinary action, and other workload and performance measures. Additionally, the report provides a summary of the status of the Board's efforts related to implementing recommendations for improvement contained in the Monitor's prior reports. Finally, it provides several additional recommendations for improvement.

The Dental Board was provided with copies of the Final Report in draft form so that it could review the report and provide us with comments or additional information prior to the publication of the report in final form. Subsequently, we met with the Dental Board's Executive Officer and Chief of Enforcement to discuss various issues and concerns that they had with the draft Final Report. The draft Final Report was then modified to incorporate the additional information that was provided to us and to address each of the specific issues that were discussed during this meeting.

During the first year following appointment of the Enforcement Monitor, the Dental Board reconstituted its management team and fully or partially implemented many of the recommendations for improvement contained in our Initial Report. With fewer staffing resources, the Board increased the number of complaint closures and completed investigations, reduced the number of pending complaints and investigations, increased the number of cases referred to the Attorney General's Office for disciplinary action, and began to address long-standing concerns about the extended timeframes needed to resolve and investigate complaints. These accomplishments resulted from the outstanding efforts of a small group of fewer than two dozen managers, investigators, and support staff who, to date, have received little recognition for their dedication and hard work.

During the past year the Board has continued to be impacted by workforce reductions imposed as a result of the State's fiscal crisis. Of the 30 positions previously allocated to the Enforcement Program, 23 percent were either abolished or redirected to other program areas. This includes four of the Board's twelve Investigators and the supervisor of the Central Complaint Unit in Sacramento. These reductions have limited management's capability to keep pace with day-to-day workload demands and concurrently plan and initiate improvements that could enhance Enforcement Program performance. For the most part performance and service levels have now reached a plateau. Further improvements are likely to be limited unless some additional management and staffing resources are provided.

While significant improvements have been achieved, the timeframes needed to resolve and investigate complaints are still unacceptably long. Currently, an average of more than three months is needed to resolve complaints that are not referred for inspection or investigation, with 22 percent taking longer than 120 days. An average of more than eight months is needed to complete complaint investigations, with 31 percent taking longer than a full year.

There is a large and growing backlog of disciplinary action cases pending at the Attorney General's Office. During just the past six months, the average age of pending disciplinary action cases has increased from nine months to twelve months. It usually takes more than two weeks to have a case assigned to an attorney, and

sometimes as long as two months. Similarly, it usually takes at least three to four months for an accusation to be filed, and sometimes as long as six months. During this period, there is no disclosure to the public about these prospective disciplinary actions. In most instances the elapsed time from referral of a new case to the date set for a hearing is usually in the range of seven to eleven months, although a period of a year or longer is not uncommon. The total timeframe needed to complete disciplinary actions typically ranges from 9 to 18 months, although it is not uncommon for these cases to take 2 to 3 years to complete.

The large and growing backlog of pending disciplinary action cases is absorbing an increasing proportion of the time that Enforcement Program managers and staff have available for complaint review and investigation, and associated supervisory and management functions. Workforce reductions imposed on the Attorney General's Office (AGO) and the Department of General Services' Office of Administrative Hearings (OAH) are adversely impacting the enforcement programs that they support. Steps need to be taken by the AGO and the OAH to accelerate the processing of the Dental Board's disciplinary action cases and to prevent the backlog of pending cases from increasing any further.

The Board has not yet begun to address a number of recommendations for improvement identified in the Monitor's previous reports, and has only partially implemented many others. The Board has the capability to continue implementing selected improvement initiatives on a phased basis. However, to date management has not developed an overall plan or schedule for addressing these recommendations. The Dental Board should require that management develop an Enforcement Program Improvement Plan within the next 60 days, and submit it to the Board's Enforcement Committee and to the full Board for ongoing oversight and monitoring purposes.

Several recommendations for improvement are time-sensitive and should be addressed within the next 30 to 60 days. This includes various recommendations involving legislative or budgetary changes. Also, to the extent possible within currently available resource capabilities, management team responsibilities should be realigned to provide a higher level of support to the Enforcement Program. Finally, as of December 31, 2003, Tustin office Investigators were carrying 50 percent higher caseloads than Investigators in Sacramento. It is our understanding that the Chief of Enforcement has already taken steps to better align investigative workload demands and staffing resource capabilities between the Tustin and Sacramento offices. These and other recommendations for improvement are discussed more fully in the accompanying Final Report.

We would like to take this opportunity to thank the Board's Executive Officer, Ms. Cynthia Gatlin, the Chief of Enforcement, Ms. Lynn Thornton, and the Tustin Office Enforcement Supervisor, Ms. Teri Lane, for their continued cooperation and assistance with this project. We also would like to extend our gratitude to other Dental Board managers and staff who have supported our efforts, including Ms. Gladys Mitchell, Ms. Oralia Moya, and Ms. Irene Gonzales. Finally, we would like to thank Ms. Teri Ciau for her assistance as the Department of Consumer Affairs' Contract Manager.

We have truly appreciated this unique opportunity to serve for the past two years as the Department's monitor for the Dental Board's Enforcement Program. If you have any questions or need additional information, please call me at (916) 442-0469.

Very truly yours,
NewPoint Group®, Inc.



Benjamin M. Frank, Director

Overview of Enforcement Monitor Reports

INITIAL REPORT — On August 23, 2002, the Dental Board Enforcement Monitor issued the first report required by S.B. 26 (Figueroa). The report contained more than 40 specific recommendations for improvements. The Initial Report also included baseline workload and performance metrics for FY2001/02. A supplemental report issued on November 13, 2002, provided a summary of recommendations contained in the Initial Report along with information on the status and impacts of the Board's related implementation efforts.

SECOND REPORT — A second report was issued by the Enforcement Monitor on February 14, 2003. The Second Report provided updated information on the status of the Dental Board's Enforcement Program. The Second Report also provided a summary of the status of the Board's efforts related to implementing each of the recommendations contained in the Initial Report. The focus of the Second Report was on changes that had occurred during the first half of FY2002/03.

THIRD REPORT — The focus of the Enforcement Monitor's Third Report, issued on August 22, 2003, was on changes that had occurred during the second half of FY2002/03. The report provided updated information on the status of the Enforcement Program and on the status of the Board's efforts related to implementing recommendations contained in the Initial Report. The Third Report also included results of a targeted assessment of the Board's unlicensed activity investigations. Additionally, the Third Report contained a *Preliminary "Blue Print" for an Improved Enforcement Program*. The "Blue Print" identified two dozen initiatives that should be undertaken by the Board to improve Enforcement Program performance and service levels. Collectively, these initiatives were intended to serve as a pathway to guide the Board's performance improvement planning efforts. Finally, the Third Report contained several additional recommendations for program management and other improvements.

FINAL REPORT — This report is the Enforcement Monitor's final report. The Final Report provides a brief overview of the Board's accomplishments since issuance of the Initial Report, documents results of our review of recent program performance, and provides updated information on the status of recommendations for improvement that the Board has not yet fully implemented. Also, several additional recommendations for improvement are presented. The report is organized as follows:

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A. Summary

Pursuant to S.B. 26, our initial assessment efforts during mid-2002 focused primarily on the Enforcement Program's overall effectiveness and efficiency. This included review and analysis of:

- The quality and consistency of complaint processing and investigation
- The timeframes needed for complaint handling and investigation
- Complaint backlogs
- Other related managerial, organizational, and operational problems, issues, and concerns.

Overall, results of the initial assessment showed that there were numerous significant inconsistencies in the way that the Board was processing and investigating complaints, and that it was taking too long to resolve and investigate complaints. Also, as a result of the State's hiring freeze, backlogs had begun to accumulate which could have caused significant further deterioration in the level of service provided. Finally, there did not appear to be any documented strategy or plan to fully address the above issues and other existing needs for improvement.

Concurrent with release of the Enforcement Monitor's Initial Report, the Dental Board began to address the above issues and concerns. The Board fully implemented more than one-half of the recommendations for improvement contained in the Monitor's Initial Report, including many of the most critical recommendations, and partially implemented a number of others. With fewer staffing resources, the Board:

- Increased the number of complaint closures
- Reduced the number of pending complaints and investigations
- Decreased the amount of time need to resolve and investigate complaints
- Increased the number of cases referred to the Attorney General's Office (AGO) for disciplinary action.

Authorized staffing for the Enforcement Program currently consists of 23 positions, all of which are filled (see **Table 1**, on the next page). This is the same number of filled positions as existed at the end of FY2002/03. The Board has not been able to restore any of the Enforcement Program positions that were abolished at the end of FY2002/03 as required by various statewide workforce reduction directives. These reductions included elimination of four Investigator positions, one Dental Consultant position, and one Office Assistant position. Additionally, for the past six months Complaint Unit staff have continued to report directly to the Chief of Enforcement who has limited time available to supervise the Unit. Also, the number of pending legal action cases has continued to increase. As a result, Enforcement Program management and staff are having to spend a greater proportion of their time on legal action cases, leaving less time available for complaint processing, investigation, and related supervisory and management activities.

Table 1
Enforcement Program Staffing

Location and Position Classification	Allocated Positions		Comments
	July 2002	Dec 2003	
Sacramento Office			
Enforcement Supervisor II	1	1	Statewide Chief of Enforcement
Staff Services Manager I	1	0	Internally redirected – Examinations
Dental Consultant	1	0	Incumbent retired – Position abolished
Senior Investigator	4	3	1 vacant position abolished
Inspector	2	2	
Associate Govt. Program Analyst	2	2	
Consumer Services Analyst	3	3	
Staff Services Analyst	-	-	Not included ¹
Consumer Assistance Technician	1	1	
Office Technician	1	1	
Office Assistant	1	0	Incumbent separated – Position abolished
Total	17	13	
Tustin Office			
Supervising Investigator I	1	1	Office Supervisor
Dental Consultant	1	1	
Senior Investigator	4	4	
Investigator	4	1	3 vacant positions abolished
Inspector	2	2	
Office Technician	1	1	
Total	13	10	
Statewide Totals	30	23	

¹ This position was redirected from the Enforcement Program to a newly created Special Licensing Unit. Most of the position's workload involved Licensing Program activities.

Given these circumstances, it is not surprising that statistical data for the first half of FY2003/04 show that Enforcement Program performance levels have reached a plateau. During this latest six-month reporting period there was virtually no net change in the total number of closed complaints and investigations compared to the preceding six-month period. Also, to the extent that the data show a decrease in the total number of pending complaints, inspections, and investigations, the improvement is attributable to a decrease in the number of complaints received rather than to any improvement in performance. Finally, while there were further decreases in the average number of days needed to resolve complaints and complete investigations, these improvements were limited given the extended timeframes involved in completing these processes.

While meaningful additional improvements in performance were not achieved during the most recent six-month period, the fact that there was no deterioration in overall program performance

is, by itself, a noteworthy accomplishment and a testimonial to the dedication and hard work of all Enforcement Program staff. A much higher level of day-to-day collaboration and teamwork among staff at all levels in the organization has been needed just to sustain core operations and maintain current service levels. Overall, the performance of the Enforcement Program over the past eighteen months has been outstanding considering the circumstances in which it has had to operate.

To enable further improvement in Enforcement Program performance, the following major issues should be addressed.

Additional Supervisory and Management Support Should Be Provided

A higher level of supervisory and management support needs to be provided to the Enforcement Program. It should not take six months or longer to resolve complaints that are not referred for inspection or investigation and, except in unusual circumstances, it should not take a full year or longer to complete investigations. Closer supervision of Enforcement Program staff is needed to assure that all complaints and investigations are processed as quickly as possible. There is a large and growing number of pending legal action cases which needs to be managed. Some provisions of the *Dental Practice Act* need to be modified, the Board's disciplinary guidelines and disclosure policy need to be reviewed and updated, formal staff performance appraisals need to be completed, the Board's customer satisfaction survey needs to be enhanced, and a substantive community outreach and education program needs to be developed and implemented. Specific goals and plans for improving operational performance and service levels need to be developed. None of these needs are being adequately addressed and, for the most part, no specific plans have been developed to address these needs at any time in the future. A day-to-day supervisor for the Sacramento Complaint Unit is needed to enable the Board's Chief of Enforcement to begin to address these areas.

Some Abolished Enforcement Program Positions Should Be Restored

It would be especially helpful if the Board could restore just two of the six Enforcement Program positions that were abolished at the end of FY2002/03. Specifically, an additional Investigator position is needed for the Tustin Office and an additional CSA or clerical support position is needed for the Complaint Unit in Sacramento. Currently, neither of these business units is adequately staffed.

Some of the Board's Non-Sworn Inspector Positions Should Be Converted to Sworn Investigator Positions

Because the Board now has such a small pool of Investigators, the loss of a single position could adversely impact the Board's investigative service capabilities, and quickly reverse the substantial performance improvements that have recently been achieved. Also, investigative, inspection, and probation monitoring workload are not always able to be optimally balanced among small groups of specialized sworn and non-sworn staff assigned to two separate regional offices. Staff effectiveness and efficiency, and program service levels, could be improved by converting some (or all) of the Board's non-sworn Inspectors to sworn Investigators, and then reallocating available

staffing resource capabilities so that they are better aligned with ongoing investigative workload demands.

Cases Referred to the Attorney General's Office for Disciplinary Action Need to Be Processed Much More Quickly

There is a large and growing backlog of disciplinary action cases pending at the AGO. These pending cases are absorbing an increasingly large proportion of available Enforcement Program staffing resources which further diminishes the Board's capabilities to resolve and investigate complaints. Currently, 35 percent of pending disciplinary action cases were referred to the AGO more than one year ago, and 15 percent were referred more than two years ago. The average age of all pending disciplinary action cases is already longer than a year, and increasing at a rate of one additional month every two months.

It is not uncommon for disciplinary action cases referred to the AGO to remain unassigned for a period of several weeks. It usually takes at least three to four months for an accusation to be filed, and sometimes as long as six months. During this period, no information about the prospective disciplinary action is disclosed to the public. In most cases, hearings before an administrative law judge are not being calendared for a period of seven to eleven months, or longer.

Very few disciplinary actions are being completed within the timeframe objectives established by the AGO for processing these types of cases. About one-half of the cases are taking longer than a full year to complete, and 30 percent are taking longer than 18 months. It is not uncommon for disciplinary action cases to take as long as 2 to 3 years to complete.

A prosecutorial process that requires a period of several years, or longer, to reach final resolution jeopardizes the likelihood of successful prosecution, works at cross-purposes to the interests of consumers, licensees, and the Dental Board, and may pose a risk of harm to patients. The causes of extended delays following referral of disciplinary action cases to the AGO need to be identified and addressed.

The Board Should Produce a Public Report on a Quarterly Basis That Summarizes Key Workload and Performance Measures

The Board should place a high priority on instituting a process for compiling and publicly reporting key Enforcement Program workload and performance measures on a quarterly basis. Prior period comparative statistics should be included along with an accompanying narrative summary explaining any significant changes that have occurred. The reports should help oversight authorities, industry representatives, and the public to better understand Enforcement Program workload demands and performance, the impacts of changes in staffing, and the results of efforts undertaken to improve performance. This type of reporting is beneficial for purposes of identifying operational problems so that timely corrective actions can be initiated. Periodic performance reporting also is helpful for purposes of strengthening a sense of accountability for performance throughout the organization, and for maintaining management's focus on needs to continuously improve internal business processes. The absence of a continuous performance reporting requirement increases the likelihood that performance levels will deteriorate and complaint backlogs will re-accumulate, leading to further reductions in the level of service

provided to consumers. If the Dental Board does not institute a process to produce quarterly performance reports on a continuous basis on its own initiative, then the Legislature should impose mandatory performance reporting requirements. Sections 2313 and 7017.3 of the Business & Professions Code, which are applicable to the Medical Board and the Contractors State License Board, respectively, could serve as models for this type of reporting requirement.

B. Organization and Staffing

Since issuance of the Enforcement Monitor's Third Report, there have been several positive developments involving the Dental Board's organizational structure and staffing, including the following:

- Following approval of a request for exemption from the statewide hiring freeze, the Board converted two limited-term peace officer appointments to a permanent status basis. Both of these limited-term appointments would otherwise have expired at the end of CY2003.
- S.B. 362 (Figueroa) was enacted which repealed statutes limiting the number of permanent peace officer appointments that can be made to the Dental Board. If additional Investigator positions are authorized in the future, the Board will be better able to recruit quality candidates and appoint them to their positions on a permanent status basis.

S.B. 362 also repealed statutes requiring that the Board conduct a \$75,000 study of the potential use of non-sworn Investigators to replace some of the Board's peace officers. At the time this issue first surfaced in the mid-1990s, the Dental Board had 17 sworn peace officers. Investigator position reclassifications and eliminations since that time precluded the need for this study. The Board's current complement of sworn peace officers consists of only 10 positions, including the Chief of Enforcement and the Tustin Office Enforcement Supervisor.

During the past six months there have been no changes in the number or classification of staff allocated to the Enforcement Program. However, the loss of an Office Assistant position that was assigned to the Complaint Unit along with the loss of the Sacramento Office Enforcement Supervisor position that was redirected to support the Examination Program have adversely impacted the Board's complaint intake and review capabilities. It is difficult for the small number of remaining staff to keep pace with the uneven flow of complaints through the intake and review process while concurrently being sufficiently attentive to needs to resolve complaints on a timely basis and provide quality service to consumers and other complainants. Three quarters of all complaints received by the Board are resolved by the Complaint Unit without referral to either inspection or investigation. It is critical that adequate resources are provided to this business unit as needed to assure the deliver of high quality, timely complaint intake and review services.

C. Program Management

The Enforcement Monitor's Third Report documented the progress made by the Board in addressing many of the recommendations contained in the Initial Report. Of the 43 recommendations contained in the Initial Report, 25 had been fully implemented by August 2003. Among these were included:

- Development of an initial Enforcement Program Improvement Plan
- Assignment of the Sacramento Office Inspectors to the Chief of Enforcement
- Approval of hiring freeze exemption requests to enable two limited-term peace officers to be appointed to their positions on a permanent status basis
- Implementation of measures to reduce the number of complaints referred to investigation and to streamline investigative processes for certain types of cases
- Conduct of structured cases reviews on a regular basis
- Designation of individuals in each region to oversee and supervise probation monitoring activities
- Development and implementation of a timekeeping application for Investigators
- Award of a new Diversion Program contract that offers a range of treatment options as needed to address individual participant needs and circumstances
- Development of a more collaborative working relationship with Department of Consumer Affairs Budget Office staff to support preparation of more accurate expenditure projections, and increased oversight of fiscal management processes by the Board's Executive Officer.

During the past six months, the status of the Board's efforts related to implementation of recommendations contained in the Monitor's Initial Report has changed very little. For example:

- **Industry Expert Pay Rates:** The Board did submit a Budget Change Proposal (BCP) to the Department of Consumer Affairs to increase industry expert pay rates. However, the BCP was denied by the Department of Finance.
- **Disclosure Policy:** A previously issued written Public Disclosure Policy issued by the Board was located by a representative of the AGO and brought to the Board's attention. This policy was issued six years ago in January 1997. However, the Board has not yet completed an analysis of this policy relative to the proposed "Recommended Minimum Standards for Consumer Complaint Disclosure" issued by the Department of Consumer Affairs more than 18 months ago, or ascertained whether needs exist to revise or update the existing policy. Application of the Department's proposed standards could substantially alter the Board's practices with respect to disclosing information on consumer complaints. For example, they may permit disclosure of most, or all, cases referred for disciplinary action in advance of the filing of an accusation.
- **Service Level Objectives:** The Board's Chief of Enforcement established some elapsed time objectives related to performing quality of care complaint investigations, and restated the Board's overall goal requiring that all investigations be completed within 180 days. However, goals and objectives for completing non-quality of care investigations have not

yet been established. Also, goals and objectives for completing inspections have not been established. Finally, the objectives previously established for complaint intake and review still need to be updated and enhanced.

A number of other recommendations made in the Monitor's Initial Report have not yet been fully implemented. These include the following:

- **Legal Action Case Tracking:** The Board's current legal action case tracking application needs to be modified to (1) track the aging of cases referred to the AGO by major step in the process, and (2) support production of performance measures, such as the average age of open or completed cases. These two areas are not addressed by the current application which embeds dates of key events within a narrative chronological summary. Many key action dates are missing from the narrative summaries. Also, the application has no automated processing capabilities. Separate hand tabulations must be performed to determine the average age of pending or completed cases, or the number of elapsed days between various steps in the process (e.g., number of days between referral of cases to the AGO and assignment to a DAG or the filing of an accusation).
- **Complaint Tracking System:** In some areas modifications to the Board's complaint tracking system are needed to improve the quality of management information. However, accomplishing this is subject to the availability of programming resources from the Department of Consumer Affairs. In other areas, needed system improvements can potentially be addressed by changing internal operating policies and procedures, training staff to properly code transactions, or by using currently available standard reports for their intended purpose. As one example, complaints that are referred for inspection should not be counted as closed until the inspection process is completed. Currently, these complaints are coded as closed as soon as they are referred for inspection, which usually happens within several days of receipt. These very short elapsed processing times are then improperly included in the Board's overall statistics showing the average amount of time needed to resolve complaints, thereby understating how much time is actually needed.
- **Customer Satisfaction Survey:** The Board began disseminating a newly developed customer satisfaction survey during July 2003. However, the survey does not capture key performance metrics such as the level of satisfaction with the timeliness of the Board's complaint handling services. Also, the survey format selected by the Board may be contributing to a very low survey response rate.
- **Policy and Procedures Manuals:** Updated manuals for the Complaint Unit, Inspection, and Probation Monitoring were previously completed. A Supervisor's Manual also was updated. The Board has not yet updated the Investigation Policy and Procedures Manuals. Also, the Board's Disciplinary Guidelines have not been updated for more than seven years (since 1996).
- **Complaint Closing Letters:** The Chief of Enforcement recently began to work with Complaint Unit staff in developing improved complaint closing letters.

Listed below are several key recommendations contained in the Monitor's Initial Report that the Board has not yet begun to implement.

- ⇒ Development and implementation of a structured process for assessing and monitoring Enforcement Program performance
- ⇒ Conduct of an analysis of Enforcement Program staffing requirements
- ⇒ Development and implementation of a new approach for estimating AGO and OAH staffing requirements and expenditures
- ⇒ Conduct of formal written performance appraisals for all Enforcement Program staff
- ⇒ Development and implementation of a Community Outreach and Education Program.

The Board also has not yet begun to implement any of the following six recommendations that were included in the Monitor's Third Report. All of these recommendations are still relevant to the Board's current circumstances.

Recommendation III-1: *Board staff should develop an Enforcement Program Service Improvement Plan. The Service Improvement Plan should define performance and service level goals and objectives for each major component of the Enforcement Program, and identify specific improvement initiatives that will be undertaken to achieve these goals and objectives. As a core component, the Service Improvement Plan should provide for a Sacramento Office Enforcement Supervisor on at least a half-time basis. An accompanying time-phased implementation schedule also should be provided.*

Recommendation III-2: *The Dental Board should develop an overall plan to implement each of the 18 recommendations contained in the Monitor's Initial Report that have not yet been fully implemented. This plan also should incorporate other recommendations for improvement included in this report. An accompanying time-phased schedule for implementation of each recommendation also should be provided.*

Recommendation III-4: *Board staff should periodically produce a public report that summarizes of key program performance measures, including most (or all) of the performance measures presented in this report. Prior period comparative statistics should be included along with accompanying narrative explaining any significant changes that have occurred. The report should help oversight authorities, industry representatives, and the public to understand Enforcement Program workload demands and performance, the impacts of any changes in staffing, and the results of efforts undertaken to improve service levels, effectiveness, and efficiency.*

Recommendation III-5: *The Dental Board should consider sponsoring legislation that would increase the potential penalties that can be imposed on offenders that practice dentistry without a license.*

Recommendation III-6: *The Dental Board should modify its customer satisfaction survey to obtain input from complainants regarding whether they were treated courteously, whether their complaint was processed in a timely manner, and whether the action taken by the Board was appropriate.*

Recommendation III-7: *The Dental Board should consider sponsoring legislation that would require that dental societies and state and local government agencies, that receive complaints involving the competence or conduct of a dentist, disclose to the complainant that the Dental Board is the only authority in the State that can take disciplinary action against the license of a licensee, and provide the complainant with the Dental Board's mailing address, toll-free phone number, and website address.*

It is possible that the State's fiscal circumstances may improve within the next year or so, or that there may be fewer constraints placed on special fund agencies, such as the Dental Board, beginning as soon as FY2005/06. To the extent that additional resources may be required to implement the above recommendations, the Board needs to begin the process of preparing related Budget Change Proposals (BCPs) now for possible inclusion in the Governor's FY2005/06 Budget. While some, or all, of the BCPs may be denied, the Board should aggressively pursue any potential opportunity that might be available to obtain the management, support staff, and other resources that it needs for its Enforcement Program.

Finally, the Board needs to continue to closely monitor its expenditures for AGO services. As of December 31, 2003, the Board had already expended nearly two-thirds of the total amount allocated for AGO services for all of FY2003/04. It is our understanding that some extra-ordinary expenditures were incurred during the first half of FY2002/03. Nonetheless, unless funding is redirected from other areas, there is a risk that AGO services will have to be curtailed to stay within budget, resulting in further delays in the processing of disciplinary action cases.

D. Program Performance

Baseline Performance

FY2001/02 was established by the Enforcement Monitor as a base year for purposes of assessing impacts of the Board's performance improvement efforts. During FY2001/02 it took the Board's Complaint Unit an average of five months to resolve complaints that were not referred for inspection or investigation. Also, more than 35 percent of these complaints took longer than six months to resolve. The extended calendar timeframe needed to resolve complaints was partially a function of the accumulation of large backlogs of pending complaints. As of June 30, 2002, there were 971 pending complaints assigned to the Complaint Unit.

Similar performance problems existed in connection with the Board's complaint investigations. During FY2001/02 it took an average of about ten months to complete complaint investigations. This was in addition to the calendar time needed for complaint intake and review. Also, 37 percent of the investigations took longer than a full year to complete. The extended calendar timeframe needed to complete complaint investigations was partially a function of the accumulation of large backlogs of pending investigations. As of June 30, 2002, there were 432 pending investigations.

In the past Board management has taken exception with the Enforcement Monitor's use of the term "backlog" in reference to the Board's pending complaints and investigations. The Board's position has been that it does not have any backlogged complaints or investigations because all complaints have been "assigned", irrespective of how many cases have already been assigned to staff or how long it is taking staff to process these cases.

At the time of our initial review, the Board had a substantial backlog of pending complaints and investigations, even though all of these cases were assigned. Complaint Unit staff were each assigned more than 300 complaints, which is inherently unmanageable, and the Board's

Investigators were carrying an average of 54 cases, well above a desired level of 30 to 35 cases per position. As a result of these excessive caseloads, the processing of complaints took much longer than would otherwise have been necessary. The Board's backlogs included more than 400 pending complaints plus about 200 pending investigations. While these backlogs have been significantly reduced, and nearly eliminated in the Complaint Unit, they still exist in both areas and are contributing to the excessive timeframes needed to resolve and investigate complaints.

On a going forward basis, the Board should make specific efforts to quantify the number of backlogged complaints in each of the Enforcement Program's business units, and then make specific efforts to reduce and eliminate them as quickly as possible. The interests of the Board are best served by business practices that highlight the existence of backlogs or any other operational or performance problems that are actually being experienced.

FY2002/03 Performance Summary

At the beginning of FY2002/03 a new Chief of Enforcement and a new Tustin Office Enforcement Supervisor were appointed. These two appointments helped to enable a rather remarkable turnaround in Enforcement Program performance during the next year.

For example:

- The total number of pending complaints, inspections, and investigations was reduced by 29 percent from 1,454 as of June 30, 2002, to 1,026 as of June 30, 2003
- The average timeframe needed by the Complaint Unit to resolve complaints that were not referred for inspection or investigation decreased by 30 percent to 3½ months
- The proportion of complaints that took longer than six months for the Complaint Unit to resolve decreased from 35 percent to 11 percent
- The average timeframe needed to complete complaint investigations decreased by 14 percent to 8.6 months, excluding calendar time needed by the Complaint Unit to initially review these complaints
- The proportion of investigations that took longer than a year to complete decreased from 37 percent to 27 percent
- Investigator caseloads were reduced from about 54 cases per position to about 39 cases per position.

The above described performance improvements were especially significant given the Board's inability to fill four vacant Investigator positions throughout the year. Subsequently, these positions were abolished. Also, the Enforcement Program absorbed some staffing reductions during this period as a result of internal redirections of staff to other program areas. For a portion of the year the Complaint Unit Supervisor served as the Board's Interim Executive Officer and, subsequently, was redirected to support the Examination Program. Also, for most of the year an analyst assigned to legal actions was redirected to the Examination Program.

However, as noted in the Enforcement Monitor's Third Report and discussed at a hearing before the Joint Legislative Sunset Review Committee last October, statistical data for the second half of FY2002/03 suggested that Enforcement Program performance levels had possibly reached a

plateau. For example, substantially fewer complaints and investigations were closed during the second half of FY2002/03 and there was virtually no change in the total number of pending complaints, inspections, and investigations from December 31, 2002, to June 30, 2003. Additionally, management had not developed any specific goals or plans to further reduce the number of pending complaints or investigations, or to further reduce the extended timeframes needed to resolve or investigate complaints. Finally, staffing levels were expected to remain static or decrease if turnover occurred and the Board was precluded from filling vacant positions. Because of these and other factors, it was anticipated that further improvements in the timeframes needed to review and investigate complaints might not be realized.

FY2003/04 Performance Summary

Statistical data for the first half of FY2003/04 show that Enforcement Program performance levels have reached a plateau. During this six-month period there was virtually no net change in the total number of closed complaints and investigations compared to the preceding six-month period. While there was a 4 percent decrease in the total number of pending complaints, inspections, and investigations during this period, this decrease is fully attributable to an 8 percent decrease in the number of complaints received rather than to any improvement in performance. Finally, while there were decreases in the average number of days needed to resolve complaints and complete investigations, these improvements were marginal given the extended timeframes involved in completing these processes.

The inability of the Board to achieve meaningful improvements in Enforcement Program performance during this latest six-month period is partially attributable to continuing adverse impacts caused by the State's budget crisis. During the past six months the Enforcement Program has continued to operate without a Supervisor for the centralized Complaint Unit in Sacramento. Also, the Enforcement Program has had to absorb some additional mandated staffing reductions, including elimination of a Dental Consultant position when the incumbent retired, and elimination of an Office Assistant position when the incumbent separated from State service. Finally, one of the Complaint Unit's three CSAs retired in July 2003. Fortunately, however, the Board was able to quickly fill this critically needed position from the State's SROA list.

Another factor contributing to the Board's inability to achieve meaningful improvements in Enforcement Program performance is the continuing absence of any structured goals or plans to improve operational performance or service levels. It is not surprising that Enforcement Program performance has not improved further given the absence of any specific plans or initiatives designed to achieve a different outcome. However, the absence of a Supervisor for the Complaint Unit, a large and growing backlog of pending legal action cases, ongoing Sacramento office investigation-related supervisory and management activities, and other programmatic and managerial responsibilities are fully absorbing whatever time that the Chief of Enforcement might otherwise have available for performance improvement planning. The Enforcement Program needs a higher level of supervisory and management support.

FY2003/04 Performance Measures

We believe that the Board has benefited from having Enforcement Program performance measured and reported on a consistent, continuous basis. This type of reporting helps

management to identify and resolve operational problems, and to establish and maintain a focus on needs to continuously improve Enforcement Program performance. It also helps to strengthen a sense of accountability for performance among Enforcement Program managers and staff. Finally, the process of periodically compiling and reporting performance measures helps management to identify and correct complaint tracking and reporting system deficiencies that otherwise might not be detected. We are concerned that, in the absence of a continuous reporting requirement, management will be less attentive to needs in this area than would otherwise be the case, thereby increasing the likelihood that performance levels will deteriorate and complaint backlogs will re-accumulate, leading to further reductions in the level of service provided to consumers. We strongly encourage the Board to place a high priority on instituting a process for compiling and publicly reporting key Enforcement Program workload and performance measures on a quarterly basis.

An analysis of key workload and operational performance measures for the Enforcement Program is provided below focusing on the period from July 1 through December 31, 2003. **Exhibit I**, at the end of this section, provides a comparative summary of selected key metrics.

Complaints Received: The Board continues to receive historically low numbers of complaints. During FY2002/03 the Board received 2,974 complaints. This was the lowest number of complaints received since the mid-1990s. During the first half of FY2003/04 the Board received 1,424 complaints compared to 1,441 complaints received during the first half of FY2002/03. The relatively low number of complaints received during the past eighteen months was a significant factor in helping to reduce complaint backlogs during this period.

Complaints Reviewed by Dental Consultants: About one-half of the complaints received by the Board involve quality of care issues. These complaints are initially reviewed by a qualified expert to determine whether they should be referred for investigation and possible disciplinary action. The Board currently has only one authorized full-time Dental Consultant position available to perform these reviews. The position is currently assigned to the Tustin office. As discussed previously, a second authorized Dental Consultant position that was assigned to the Sacramento office was abolished in July 2003. However, through the increased use of a retired annuitant and outside experts, the Board has been able to keep pace with needs related to the review of quality of care complaints. This practice provides greater flexibility in terms of balancing resource capabilities with fluctuating workload demands, and enables assignment of appropriately qualified experts when needed for specialized quality of care issues. During the first half of FY2003/04, 752 complaints were referred for review and 739 reviews were completed.

Complaint Unit Closures: During the first half of FY2003/04 the Complaint Unit closed nearly the same number of complaints as were closed during the preceding six-month period. Also, a sufficient number of complaints were closed by the Complaint Unit to keep pace with the flow of incoming complaints received. During this six-month period the Complaint Unit closed 1,094 complaints compared to 1,137 complaints closed during the preceding six-month period. The slight decrease in the number of complaints closed by the Complaint Unit during this period is partially attributable to modifications in how some complaint closures are coded and reported. For example, some new complaints involving a licensee who was already the subject of a pending legal action were previously coded and reported as Complaint Unit closures. These complaints

are now coded differently so that the complaints are reported as investigation referrals and closures.

Complaints Pending in the Complaint Unit: As of December 31, 2003, there were 569 complaints pending in the Complaint Unit, a small decrease from the number of pending Complaint Unit complaints as of June 30, 2003. Closer supervision of Complaint Unit operations and staff is needed in order to achieve substantive reductions in the number of pending Complaint Unit complaints and associated improvements in performance. The Board has not developed any specific goals or plans to further reduce the number of complaints pending in the Complaint Unit. Meaningful reductions in the number of pending Complaint Unit complaints, and other needed quantitative and qualitative performance improvements, are unlikely to be achieved given the absence of a supervisor for the Unit, current staffing constraints, and the continuing absence of any specific goals or plans to do so.

Complaints Referred for Inspection: During the first half of FY2003/04, 100 complaints were referred for inspection, a small decrease from the number referred during the preceding six-month period. This decrease is fully attributable to the 8 percent decrease in the total number of complaints received by the Board during this period.

Complaints Closed Following Inspection: During the first half of FY2003/04, 121 inspection complaints were closed. Comparable data for the preceding six-month period is not available.

Average Days to Complete Inspections: The Dental Board does not currently have automated systems that are capable of compiling data regarding the timeframes needed to close complaints that are referred for inspection. The Board should modify its complaint tracking or inspection systems so that this type of data can be produced in the future.

Inspection Outcomes: The Dental Board does not have a method for capturing information regarding the total number of site inspections performed. In most cases only one site inspection is performed for a specific complaint, with verification of compliance usually provided in writing rather than by conducting additional site visits. However, there can be multiple “outcomes” associated with a single inspection complaint. For example, both a warning letter and a citation may be issued for different violations at the same location. **Table 2**, on the next page, summarizes the outcomes resulting from the Board’s site inspections for FY2001/02, FY2002/03, and the first half of FY2003/04. As shown by Table 2, during the past eighteen months there has been a significant and sustained increase in the number of formal warning letters and citations issued by the Board’s Inspectors.

Pending Inspections and Inspector Caseloads: As of December 31, 2003, the Dental Board had about 87 pending inspections. This compares to about 100 pending inspections as of June 30, 2003. The small decrease in number of pending inspections is consistent with statistical data showing that more inspection complaints were closed than were referred for inspection during this six-month period. On average, each of the Board’s 4 Inspectors is assigned about 22 inspection complaints. Given the nature of these complaints and other responsibilities assigned to the Inspectors, the current caseload is considered an acceptable level.

Table 2
Summary of Inspection Outcomes

Type of Action	FY2001/02 (Full Year)	FY2002/03 (Full Year)	FY2003/04 (July – Dec)
Formal Warning Letter Issued	87	136	58
Citation Issued	14	23	21
Referral to Investigation	5	3	2
Informal Notice of Violation Issued	25	8	12
Compliance Verified	174	145	91
No Violation Found	51	31	15
Out of Business	6	1	2

Complaints Referred for Investigation: During the first half of FY2003/04, 243 complaints were referred for investigation, a small increase from the number referred during the preceding six-month period. This increase is fully attributable to modifications in how some complaint closures are coded and reported by the Board. As discussed earlier, some new complaints involving a licensee who was already the subject of a pending legal action were previously coded and reported as Complaint Unit closures. These complaints are now coded differently so that the complaints are reported as Investigation referrals and closures.

Complaints Closed Following Investigation: During the first half of FY2003/04, 271 complaints were closed following investigation compared to 236 complaint closures following investigation during the preceding six-month period. Most of this increase is attributable to the impacts of the previously discussed modifications made in how the Board codes and reports some complaint closures. During the first half of FY2003/04, an average of 5.6 complaints were closed per Investigator position per month. At current staffing levels this number of closures is sufficient to keep pace with the flow of complaints referred for investigation.

Complaints Closed Following Investigation, By Category: A decomposition of complaint closures following investigation for FY2002/03 and the first half of FY2003/04 is provided in **Table 3**, on the next page. The data show that complaints involving quality of care issues (competence/negligence) comprise a significant portion of the Board's investigations (41 percent). Also, offenses involving criminal charges, drugs, substance abuse, and sexual misconduct collectively comprise about 20 percent of the Board's complaint investigations. Additionally, a substantial portion of the Board's complaint investigations involve unlicensed practice (15 percent). A disproportionate number of unlicensed practice cases are reported in the Southern California region.

Pending Investigations: As of December 31, 2003, there were 328 pending investigations compared to 333 pending investigations as of June 30, 2003. During this period the Board was not able to further reduce the number of pending Investigations with its current complement of Investigators.

Table 3
Complaints Closed Following Investigation, By Category

Category	FY2002/03 (Full Year)		FY2003/04 (July - Dec)	
	Number	Percent	Number	Percent
Negligence/Incompetence	262	46.4%	111	41.0%
Unlicensed Practice	87	15.4%	37	13.6%
Unprofessional Conduct	47	8.3%	24	8.9%
Fraud	40	7.1%	15	5.5%
Drug-Related Offenses	33	5.8%	17	6.3%
Criminal Charges	28	5.0%	32	11.8%
Substance Abuse	14	2.5%	5	1.8%
No Jurisdiction	9	1.6%	3	1.1%
Sexual Misconduct	6	1.0%	3	1.1%
Other/Unknown	39	6.9%	24	8.9%
Total	565	100.0%	271	100.0%

Investigator Caseloads: On average, the Board's eight Investigators are each carrying about 36½ cases, excluding about two dozen cases that are assigned to the Tustin Office Enforcement Supervisor. This compares to an average caseload of about 57 complaints per Investigator at the beginning of FY2002/03. While still higher than a desired level of 30 to 35 cases per Investigator, these caseloads are nearly 30 percent lower than existed eighteen months ago. However, these statewide averages are somewhat misleading. As of December 31, 2003, Tustin office Investigators were carrying an average of more than 42 cases compared to an average of about 27 cases for each Sacramento office Investigator. The disproportionate accumulation of cases at the Tustin office is a result of the elimination of four of Tustin's eight authorized Investigator positions. In contrast, the Sacramento office lost only one of four authorized Investigator positions. As a result of losing a disproportionate share of its investigative staff, the Tustin office has not been able to reduce its caseloads to the same extent as has been possible in the Sacramento office. On a per position basis, during the past six months there was no significant difference in the number of investigations completed by Investigators in the two regional offices. To provide for a more equitable distribution of workload among all staff, the Chief of Enforcement recently began to assign a larger proportion of complaint investigations to Sacramento office Investigators.

Complaint Aging – Complaints Closed Without Investigation: During FY2001/02 an average of nearly 5 months was needed by the Complaint Unit to resolve complaints that were closed without referral for an inspection or investigation. During the first half of FY2002/03 this measure declined to about 4½ months. During the second half of FY2002/03 this measure declined further to about 3½ months. Finally, during the first half of FY2003/04 this measure declined still further to 94 days (about 3 months). This 38 percent decrease in the average timeframe needed by the Complaint Unit to resolve complaints, without referral for inspection or investigation, primarily reflects the impacts of a comparable percentage decrease in the number of pending complaints that occurred primarily during the first half of FY2002/03. **Table 4**, on the next page, further illustrates the substantial improvement that was recently achieved in terms of reducing the timeframes needed by the Complaint Unit to resolve complaints that are not referred for inspection or investigation.

Table 4
Complaint Unit Closures, By Day Range

Day Range	FY2002/03 (July - Dec)		FY2002/03 (Jan – June)		FY2003/04 (July - Dec)	
	Number	Percent	Number	Percent	Number	Percent
2 Months or Less	391	27%	342	30%	324	30%
2 to 4 Months	383	26%	519	46%	523	48%
4 to 6 Months	301	20%	149	13%	177	16%
More Than 6 Months	398	27%	127	11%	70	6%
Total	1,473	100%	1,137	100%	1,094	100%

According to the Board’s Chief of Enforcement, Enforcement staff have historically maintained that a “reasonable” time to process a complaint, from receipt to disposition, including gathering records and documents and a comprehensive review by a dental consultant, is approximately 120 days, with the “ideal” timeframe being 90 days. As shown by Table 4, 22 percent of complaints are currently taking longer than 120 days to process. Current staffing and procedures are not achieving “reasonable” complaint processing timeframes in many instances.

Additional reductions in the timeframes needed to resolve complaints that are not referred for inspection or investigation are partially dependent on further reducing the number of pending Complaint Unit complaints. However, as discussed previously, meaningful reductions in the number of pending Complaint Unit complaints are unlikely to be achieved given the absence of a supervisor for the Unit, current staffing constraints, and the continuing absence of any specific goals or plans to do so. Other strategies that could help to reduce the timeframes needed for complaint resolution might include establishing goals to resolve specified percentages of complaints within various timeframes (e.g., 30 days, 60 days, 90 days, etc.), conducting weekly reviews of any complaints that have aged more than 90 days to assure they are resolved within 120 days, adopting employee recognition programs, providing additional training to staff, and taking more aggressive action against licensees who fail to produce records within required timeframes.

Complaint Aging – Investigations: The Dental Board’s established goal for completing complaint investigations is 6 months (182 days). During FY2001/02 an average of about 10 months (299 days) was needed to complete complaint investigations, excluding calendar time needed by the Complaint Unit to initially process these complaints. Subsequently, as a result of the closure of large numbers of backlogged complaints during the first several months of FY2002/03, there was a temporary increase in this measure (to 358 days during the first half of FY2002/03). During the second half of FY2002/03 this measure decreased to 259 days (about 8½ months). During the first half of FY2003/04 this measure declined further to 249 days (about 8⅓ months). However, this most recent decline is largely attributable to the impacts of previously discussed modifications that were made in how some Complaint Unit legal action closures are coded and reported. In most instances, these complaints are closed within a week or two of their receipt and, in many cases, the complaints are opened and closed on the same day. As a result, the average timeframe shown for completing complaint investigations during the first half of FY2003/04 is lower than would otherwise have been reported.

Table 5, below, provides a comparative summary of complaint closures following investigation, by day range. As shown by Table 5, during the first half of FY2003/04 there was a significant increase in the proportion of investigations completed within 3 months. However, the increase shown is partially a result of the previously discussed modifications made in how some complaint closures are coded and reported. During the first half of FY2003/04, only about one-half of investigations were completed within the Board's established 6-month goal. Also, 31 percent of investigations took longer than a full year to complete – nearly the same proportion as for all of FY2002/03. In addition to reallocating workload to better align the Board's investigative capabilities with ongoing workload demands, management needs to continue to focus investigative efforts on completing investigations of complaints that have been open the longest.

Table 5
Complaint Closures Following Investigation, By Day Range

Day Range	FY2002/03 (July - Dec)		FY2002/03 (Jan – June)		FY2003/04 (July - Dec)	
	Number	Percent	Number	Percent	Number	Percent
3 Months or Less	61	20%	55	23%	93	34%
3 to 6 Months	48	15%	47	20%	49	18%
6 to 9 Months	47	15%	44	19%	27	10%
9 to 12 Months	39	13%	27	11%	18	7%
More Than 12 Months	116	37%	63	27%	84	31%
Total	311	100%	236	100%	271	100%

Complaints Referred for Criminal Prosecution: During the first half of FY2003/04 the Board referred 15 cases to local district attorneys for criminal prosecution. This is consistent with the number of cases submitted to local district attorneys during FY2002/03 (32 cases for the full year). A portion of these cases are dual-referred to the AGO for disciplinary action.

Complaints Referred for Disciplinary Action: During the first half of FY2003/04 the Board completed their investigation and referred 84 complaints to the AGO for disciplinary action (31 percent of all completed investigations). This compares to a total of 145 complaints referred to the AGO during the preceding full fiscal year. The number of complaints referred to the AGO during the latest six-month period was somewhat inflated by the submission of one case that encompassed more than a dozen separate complaints. Nonetheless, more than 25 percent of the Board's investigations resulted in initiation of disciplinary action and, historically, very few of these cases are subsequently withdrawn or dismissed. Also, a portion of these cases are dual-referred to local district attorneys for criminal prosecution.

Accusations Filed: During the first half of FY2003/04 a total of 42 accusations were filed. This compares to 67 accusations filed during the entire 2002/03 fiscal year, and 62 accusations filed during FY2001/02. The increase in accusations filed during the first half of FY2003/04, as compared to the two preceding fiscal years, is a result of the increased number of disciplinary action referrals that was achieved by the Board during the past twelve to eighteen months.

Pending Legal Actions: As a result of a 40 percent increased in the number of pending legal actions, Enforcement Program management and staff are having to spend a greater proportion of their time on these cases, leaving less time available for complaint processing, investigation, and related supervisory and management activities. As of December 31, 2003, there were 154 cases pending legal action cases at the AGO. This compares to 110 cases pending eighteen months ago (as of June 30, 2002). Of the 154 total pending legal action cases, about a dozen involve petitions to modify, revoke, or terminate probation, or to reinstate a previously surrendered or revoked license. Also included are several cases involving license applications or other matters.

Disciplinary Decisions: During the first half of FY2003/04 there were 21 disciplinary decisions adopted by the Dental Board. This compares to an average of about 40 disciplinary decisions per year for the previous two fiscal years (FY2001/02 and FY2002/03). The numbers of disciplinary decisions actually adopted in FY2001/02 and FY2002/03 were distorted by reconstitution of the Board during FY2001/02 and the resultant deferral of some FY2001/02 decisions to FY2002/03.

Table 6
Summary of Disciplinary Decisions Adopted by the Board

Type of Discipline	FY2001/02 (Full Year)	FY2002/03 (Full Year)	FY2003/04 (July – Dec)
License Revocation	8	13	6
License Surrender	8	5	5
Revocation Stayed/Suspension with Probation	7	17	5
Revocation Stayed/Probation	2	18	2
Public Reprimand	0	1	3
Total	25	54	21

Table 6, above, summarizes disciplinary decisions, by type of action. Disciplinary decisions adopted by the Board usually contain numerous additional terms and conditions in addition to those highlighted by this summary. As shown by Table 6, about one-half of the Board's decisions require either revocation or surrender of the subject's license. Most other decisions require license suspension with probation. During the first half of FY2003/04, a total of 3 cases were withdrawn or dismissed compared to a total of 8 cases withdrawn or dismissed during the two preceding fiscal years, combined.

Case Aging – Disciplinary Actions: We reviewed the Board's legal action tracking reports to determine the approximate age of currently pending disciplinary cases. Of the total currently pending disciplinary action cases:

- 60 percent were referred within the past year
- 25 percent were referred one to two years ago
- 15 percent were referred more than two years ago.

Of particular concern, the average age of currently pending disciplinary action cases is more than 12 months. This compares to an average age of only 9 months when we performed this same analysis six months ago. According to the Dental Board's Chief of Enforcement, this increase in

the average age of currently pending disciplinary action cases was caused by staffing reductions that were imposed on the Office of Administrative Hearings and on the AGO. Staff from the AGO also have reported that they have been “short-staffed” and “even delayed in assigning cases because (they) don’t have the attorneys to assign.”

For a typical case (i.e., excluding complex cases or those with submission of significant supplemental investigations) the AGO has established the following objectives:

- Assignment to a Deputy Attorney General (DAG) within five days of receiving the case; anything over ten days is considered too long
- Filing of the accusation within 60 days
- Return of a stipulated agreement to the Board for approval (i.e., no hearing) within 180 days (6 months)
- Return of the ALJ’s decision following a hearing in about 270 days (9 months).

Based on a limited review of currently pending cases at the AGO that were referred during CY2003, these objectives are not being met in most instances. For example, it usually takes more than two weeks to have a case assigned to a DAG, and sometimes as long as two months. Similarly, it usually takes at least three to four months for an accusation to be filed, and sometimes as long as six months. Finally, in most instances the elapsed time from referral of a new case to the date set for a hearing is usually in the range of seven to eleven months, although a period of a full year or longer is not uncommon.

Based on a review of disciplinary decisions recently adopted by the Board, about one-half of all cases referred to the AGO take longer than a full year to complete, and 30 percent take longer than 18 months. It is not uncommon for these cases to take as long as 2 to 3 years to complete. This analysis is based primarily on cases that were submitted to the AGO in prior years. It is likely that the timeframes needed to complete cases that were referred to the AGO more recently will be even longer.

Probation Monitoring: During the first half of FY2003/04, 18 new probation cases were opened and 25 cases were closed following completion of probation. There were 160 active probation cases as of December 31, 2003, excluding 72 out-of-state tollers. In the Sacramento office, all 70 active probation cases are assigned to the Office’s two Inspectors (an average of 35 cases per Inspector). In the Tustin office, some of the more difficult or complex probation cases are assigned to one of the office’s Investigators. All of the remaining cases are assigned to the office’s two Inspectors. Given the nature of this workload and the other responsibilities assigned to the Inspectors, the current caseload of about 35 cases per Inspector is considered an acceptable and manageable level. Previously the Inspectors have had as many as 40 assigned active probation cases, plus between 10 and 20 assigned out-of-state tollers, most of whom generally require very little monitoring by the Inspectors.

Diversion Program: The Dental Board’s three-year contract with Managed Health Network (MHN) for provision of Diversion Program services was completed on June 30, 2003. A competitive bid that was conducted for these services resulted in award of a five-year contract to Maximus. Currently, there are 55 participants in the Diversion Program. This compares to 66 participants in

the program six months ago. Previously, the number of participants has usually ranged between 90 and 100 persons. However, during August 2002 a 27-person “maintenance group” that had substantially met all requirements for successful completion of the program was discontinued. The decrease in program participation levels that occurred during FY2002/03 was a result of discontinuation of the “maintenance group”. However, a more recent decrease in Diversion Program participation levels, from 66 participants to 55 participants during the last six months, appears to be primarily a result of imposition of more aggressive urine testing procedures. Urine testing is the primary mechanism used to determine whether program participants are using alcohol or drugs, and helps to assure that consumers are protected from the risk of treatment by a dentist that is under the influence of such substances.

Cost Recovery: A total of \$60,898 in cost recoveries was ordered to be reimbursed to the Board during the first half of FY2003/04. During FY2002/03 a total of \$176,071 was ordered, but that amount was unusually large due to several especially large reimbursement amounts that were ordered during that year (i.e., \$35,000 in one case and \$25,000 in another).

Restitution: The number and amount of refunds and restitution obtained for consumers during the first half of FY2003/04 is not able to be determined. During this period some Complaint Unit staff did not properly code complaints to enable compilation of these performance measures. Also, it is not practicable to review each case file to reconstruct this history. Training was provided to all Complaint Unit staff to prevent recurrence of this same problem in future periods.

Comparative Summary of Selected Workload and Performance Measures

Workload or Performance Indicator		FY2001/02 (Full Year)	FY2002/03			FY2003/04 Jul-Dec
			Full Year	Jul-Dec	Jan-Jun	
Complaint Intake & Review	Complaints Received	3,178	2,974	1,441	1,553	1,424
	Referred to Consultants	1,490	1,876	1,192	684	752
	Completed By Consultants	1,297	2,093	1,260	833	739
	Closed by Complaint Unit ¹	2,453	2,610	1,473	1,137	1,094
	Average Days to Close ¹	149	116	137	105	92
	Percentage Taking Longer Than 6 Months to Close	35%	20%	27%	11%	6%
	Pending Complaints (End of Period)	971	593	633	593	569
Investigations	Referred to Investigation	556	469	244	225	243
	Closed Following Investigation	462	565	329	236	271
	Complaints Closed Per Investigator Per Month	4.8	5.9	6.9	4.9	5.6
	Average Days to Close (Excluding Intake & Review)	299	315	358	259	249
	Percentage Taking Longer Than 1 Year to Close	37%	33%	37%	27%	31%
	Pending Investigations (End of Period)	432	333	336	333	328
	Investigator Caseloads (Average, End of Period) ²	54	39	39	39	37
	Referrals for Disciplinary Action (AGO)	118	145	87	58	84
	Referrals for Criminal Prosecution (DAs)	22	32	24	8	15
Legal Actions	Accusations Filed	62	67	NA	NA	42
	Pending Legal Actions	110	141	114	141	153
	Average Days to Complete	NA	NA	NA	NA	NA
	Disciplinary Outcomes (see Table 6)					
Inspections	Referred to Inspection	259	237	127	110	100
	Inspection Unit Closures	NA	167	NA	NA	121
	Inspection Outcomes (see Table 2)					
	Average Days to Close	NA	NA	NA	NA	NA
	Pending Inspections (End of Period)	51	100	NA	100	87
	Inspector Caseloads (Average, End of Period)	13	25	NA	25	22
Total Pending Complaints, Inspections and Investigations (End of Period)		1,454	1,026	1,050 (Est)	1,026	984
Probation	Opened Cases	39	39	NA	NA	18
	Completed Cases	65	26	NA	NA	25
	Pending Cases (End of Period, Excluding Tollers)	179	181	NA	NA	160
Diversion - Number of Participants (End of Period)		94	66	NA	NA	54
Other	Cost Recovery Ordered	\$119,501	\$176,071	NA	NA	\$60,898
	Number of Consumer Refunds and Adjustments	59	79	NA	NA	NA
	Total Consumer Refunds and Adjustments	\$60,023	\$96,731	NA	NA	NA

¹ Excludes all complaints referred for either inspection or investigation.

² Caseloads shown for FY2002/03 and FY2003/04 exclude about two dozen complaints assigned to the Tustin Office Supervisor.
NA - Not available or unknown.

E. Customer Relations

In our Initial Report we recommended that the Board immediately disseminate a customer satisfaction survey for all complaints closed during FY2001/02, and disseminate surveys during FY2002/03 on a continuous basis in conjunction with case closing letters. The Board did not conduct a customer satisfaction survey for any complaints closed during either FY2001/02 or FY2002/03. During July 2003, the Board began disseminating, in conjunction with complaint closing letters, a newly developed two-page survey that asks respondents to indicate their level of satisfaction (low, medium, high) in each of the following areas:

- If you initially contacted the Dental Board by telephone, were you satisfied with the information or assistance provided by our staff?
- Were you satisfied with the information or advice you received on the handling of your complaint?
- Were you kept informed about the status of your complaint during:
 - the initial complaint review process?
 - the investigative process?
 - the disciplinary process?
- Were you provided with the information about the outcome of your complaint and were the findings clearly explained to you? Note: we are interested in whether the information provided on the complaint disposition was sufficient, not whether you agreed or disagreed with the findings.
- Were you satisfied with the overall service provided by the Dental Board?

A space also is provided for respondents to provide any comments or suggestions that they believe would improve the services that they received. A final question asks respondents to indicate how they found out where to file a complaint (consumer fair, friend/relative, Internet, licensee or other health care provider, other governmental agency, telephone book/information, or other). As discussed in our Third Report, there are several basic questions that aren't asked that should be included as part of such a survey. Specifically, the Dental Board should revise its survey to query complainants in the following three areas:

- Whether they were treated courteously by the Board's representatives
- Whether their complaint was processed in a timely manner
- Whether the action taken by the Board on their complaint was appropriate.

All three of these areas are central to understanding consumer satisfaction with the Dental Board's Enforcement Program services, and none are specifically addressed by the questions included in the current survey.

During the first six months of FY2002/03, the Board received only about 30 responses to its consumer satisfaction survey. It is somewhat premature to draw firm conclusions from this small number of responses. The responses to date suggest that about one-half of respondents are reasonably satisfied with the Board's overall services, and that about one-half are highly dissatisfied. In many cases the respondents took the time to provide extensive comments

explaining the reasons for their ratings. In most cases these comments reflect a very high level of dissatisfaction with the Board's services.

Having a relatively large percentage of dissatisfied respondents is not unexpected given the nature of the Board's activities and the extended timeframes needed to resolve and investigate complaints. The purpose of conducting this type of survey is to first develop a set of baseline performance metrics regarding the level of consumer satisfaction with the Board's services so that the Board and other stakeholders can assess current Enforcement Program service levels and determine the impacts of the Board's performance improvement efforts. As the Board implements strategies and initiatives designed to achieve a higher level of consumer satisfaction with its Enforcement Program services, the survey results should improve from current levels. As with other performance measures, this type of survey is helpful for purposes of maintaining a focus on needs to provide high quality services to consumers and to continuously improve service levels and performance.

In addition to modifying the survey questions, the Board also should revise the format of the survey. It is likely that the current two-page format discourages responses. The Contractors State License Board uses a postcard style survey and consistently achieves at least a 30 percent response rate. In comparison, only about 2 percent of complainants are responding to the Dental Board's survey. A higher response rate would help to improve the validity and reliability of the survey results, and enable comparison of these results over time.

F. Potential Legislative Initiatives

In our Third Report we recommended that the Board consider sponsoring legislation to increase the penalties for the unlicensed practice of dentistry. We also recommended that the Board consider sponsoring legislation that would require that dental societies and state and local government agencies, that receive complaints involving the competence or conduct of a dentist, provide specified disclosures to the complainant. In both cases such changes would make the Dental Practice Act more consistent with provisions of the State's Medical Practice Act. Subsequently, the Dental Board's Chief of Enforcement identified several other areas where the Dental Practice Act should possibly be strengthened. In most cases these changes also would make the Dental Practice Act more consistent with the Medical Practice Act.

The Board has not taken any action in response to the Enforcement Monitor's previous recommendations for legislative changes. Our previous recommendations are still valid and the other potential changes identified by the Board's Chief of Enforcement also appear to have merit. The Dental Board needs to address these issues so that enabling legislation can be introduced and adopted.